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NO. 77-1137

IN THE SUPREME COURT OF
THE UNITED STATES
October Term, 1977

CLARENCE NEVILLE,

Petitioner,

V.

THE HONORABLE SIMON L. FRIEDMAN, Judge of the Circuit Court of Sangamon County, Seventh Judicial Circuit of Illinois, and C. JOSEPH CAVANAGH, State's Attorney for Sangamon County, Springfield, Illinois,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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INDEX

	Page
OPINION BELOW	5
QUESTION PRESENTED	5
STATUTES INVOLVED	6
STATEMENT OF THE CASE	6
ARGUMENT	7
CONCLUSION	9

CITATIONS

Cases:	
People v. Neville, 67 Ill. 2d 488, 367 N.E. 2d 1341 (1977)	8
People v. Siglar, 49 Ill. 2d 491, 496 (1971)	7
People v. Woods, 27 Ill. 2d 393, 395 (1963)	7
Ridgeway v. United States, 558 F. 2d 357 (6th Cir. 1977)	8
United States ex rel. Esola v. Groomes, 520 F. 2d 830 (3d Cir. 1975)	8
United States v. Ford, 550 F. 2d 732 (2d Cir. 1977)	8
United States v. Mauro, 544 F. 2d 588 (2d Cir. 1976)	8
United States v. Ricketson, 498 F. 2d 367, 373, (7th Cir. 1974), cert. denied, 419 U.S. 965, 95 S.Ct. 227, 42 L.Ed. 2d 180	8
United States v. Roberts, 548 F. 2d 665 (6th Cir. 1977)	8
United States v. Sorrell, 413 F. Supp. 138 (E.D. Pa. 1976)	8
Statutes:	
18 U.S.C. Appendix, Sec. 2, Art. IV(e)	6
Illinois Revised Statutes, 1973, ch. 38, par. 1003-8-9(a)	6

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Illinois is reported at 67 Ill. 2d 488, 367 N.E.2d 1341.

QUESTION PRESENTED

Does the Interstate Agreement on Detainers Act require the dismissal of indictments pending against a defendant who, as a result of lengthy, indefinite trial continuance granted at his request, has been returned to the sending jurisdiction without objection on his behalf?

STATUTES INVOLVED

The Interstate Agreement on Detainers Act, 18 U.S.C. Appendix Section 2, Article IV(e) provides:

> "If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."

Illinois Revised Statutes, 1973, ch. 38, par. 1003-8-9(a) provides:

> "If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice."

STATEMENT OF THE CASE

Respondent, C. Joseph Cavanagh, accepts Petitioner's statement of the case with the following additional facts:

The Petitioner was returned to Sangamon County on June 4, 1976 pursuant to the Interstate Agreement on Detainers Act to stand trial during the week of June 7. 1976. Subpoenas were issued to witnesses on behalf of The People and the prosecution was prepared to commence trial the week of June 7. On June 9, 1976, the Petitioner advised the court that he had fired his retained counsel and wished time to retain a new attorney. The court granted the Petitioner's request and ordered that the case be set for trial on August 2, 1976, with the proviso that no further continuances would be granted.

On July 15, 1976, James Potter of Springfield, Illinois, and Gerald Alch of Boston, Massachusetts were granted leave to enter their appearance as counsel for Petitioner. Defense counsel then moved to continue the trial of the case to October 25, 1976. This motion was allowed by the court and trial of the case was continued to October 25, 1976.

Subpoenas were issued to witnesses on behalf of The People and the prosecution was prepared to go to trial on October 25, 1976. On October 18, 1976, defense counsel moved to continue the trial from October 25, 1976 because of the illness of one of petitioner's attorneys. The court allowed the motion for a continuance and set an indefinite trial date in the month of January, 1977, with a specific trial date to be set thereafter.

Nowhere does the record reflect that the Petitioner objected to either the continuances granted him or his return to the federal penitentiary at Terre Haute.

ARGUMENT

On the strength of a literal interpretation of Chapter 38, Section 1003-8-9(a), Illinois Revised Statutes, Illinois' adoption of the Interstate Agreement on Detainers Act (Agreement), Petitioner urges the permanent prohibition of trial on indictments pending against him. Petitioner claims that under the Agreement he is entitled to dismissal of the charges against him in Sangamon County because he was returned without trial to the sending jurisdiction. Petitioner's argument overlooks the purpose of the Agreement which is expressed in Article I thereof. The gist of Article I is that the Agreement is designed to encourage the expeditious and orderly disposition of untried charges against a prisoner in order to accomplish its basic purpose of reducing obstructions to programs of prisoner treatment and rehabilitation.

The record in this matter discloses that the State was prepared to go to trial within three (3) days of the date on which Petitioner was brought to Illinois from the federal penitentiary at Terre Haute, Indiana pursuant to the Agreement. Each of the continuances thereafter was attributable to Neville. *People* v. *Siglar* (1971), 49 Ill. 2d 491, 496, *People* v. *Woods* (1963), 27 Ill. 2d 393, 395. It is clear that the statutory objectives of the Agreement were being frustrated by retaining Neville in a county jail neither designed nor equipped and staffed for rehabilitation of prisoners.

Petitioner relies upon a number of cases in support of his position that return to the sending jurisdiction without trial mandates dismissal of the indictments against him[1].

Each of these cases is factually distinguishable from this case in which Petitioner asks this court to grant certiorari. The Supreme Court of Illinois in considering *United States* v. *Ricketson*, (7th Cir. 1974), 498 F. 2d 367, 373, cert. denied (1974), 419 U.S. 965, 42 L.Ed. 2d 180, 95 S.Ct. 227, *United States ex rel. Esola* v. *Groomes*, (3d Cir. 1975), 520 F. 2d 830, and *United States* v. *Sorrell*, (E.D. Pa. 1976), 413 F. Supp. 138, found that the absence of a continuance granted at defendant's request served to distinguish those cases from this case. *People* v. *Neville*, 67 Ill. 2d 488, 367 N.E. 2d 1341 (1977). The Illinois court was not asked to specifically address *Ridgeway* v. *United States*, 558 F. 2d 357 (6th Cir. 1977) and *United States* v. *Ford*, 550 F. 2d 732 (2d Cir. 1977). The central issue of each of those cases was whether a federal writ of *habeas corpus ad prosequendum* was to be treated as a "detainer" under the Agreement; that was also a tangential issue mentioned in *dictum* in *United States* v. *Roberts*, 548 F. 2d 665 (6th Cir. 1977).

In discussing *United States* v. *Mauro*, (2d Cir. 1976), 544 F. 2d 588, the Illinois Supreme Court determined in *People* v. *Neville, supra*, that the question of whether a federal writ of *habeas corpus ad prosequendum* is the equivalent of a detainer under the Agreement was not relevant to the matter being considered. It is respectfully submitted that the same holds true to the other cases cited by Petitioner which speak to the *habeas corpus* issue.

Respondent suggests that Petitioner has presented no persuasive authority to support his position

1 *United States ex rel. Esola v. Groomes*, 520 F. 2d 830 (3d Cir. 1975); *United States* v. *Sorrell*, 413 F. Supp. 138 (E.D. Pa. 1976); *United States* v. *Ricketson*, 498 F. 2d 367, (7th Cir. 1974), cert. denied, 419 U.S. 965, 95 S.Ct. 227, 42 L.Ed. 2d 180 (1974); *United States* v. *Ford*, 550 F. 2d 732 (2d Cir. 1977); *United States* v. *Mauro*, 544 F. 2d 588 (2d Cir. 1976); *United States* v. *Roberts*, 548 F. 2d 665 (6th Cir. 1977); *Ridgeway* v. *United States*, 558 F. 2d 357 (6th Cir. 1977).

that the Agreement mandates dismissal given the circumstances herein. It is further suggested that his return to the sending jurisdiction under the given factual circumstances implemented the underlying rehabilitative purpose of the Agreement and that denial of the writ of prohibition was proper.

CONCLUSION

For these reasons, Respondent urges this Honorable Court to deny the petition.

Respectfully Submitted,

_____

C. Joseph Cavanagh
State's Attorney
Sangamon County, Illinois

By: _____

J. William Roberts
First Assistant State's Attorney